



Order under Section 100 Residential Tenancies Act, 2006

Citation: MM Nominee Corp. v Occupant, 2026 ONLTB 11266

Date: 2026-02-03

File Number: LTB-L-015854-25

In the matter of: 1111, 310 Niska Road
Toronto Ontario M3N2S3

Between: MM Nominee Corp. Landlord

And

Taiwo Oba Tenant

And

Ibrahim Oba Unauthorized Occupants
Azizat Oba
Idris Oba

MM Nominee Corp. (the 'Landlord') applied for an order to terminate the tenancy of Taiwo Oba (the 'Tenant') and evict the Unauthorized Occupant because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for compensation by the Unauthorized Occupant for the use of the rental unit.

This application was heard by videoconference on May 12, 2025.

The Landlord's Agent, Oscar Velasquez, the Landlord's Legal Representative, Sara Ginman, the Tenant, and the Tenant's support person (spouse), Adecoro Dennis, attended the hearing.

As of 1:43 p.m., the Unauthorized Occupants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's and Tenant's evidence.

Determinations:

Preliminary Issue: Parties to the Application

1. At the hearing, the Tenant confirmed that three of his children, Ibrahim Oba ('IbO'), Azizat Oba ('AO'), and Idris Oba ('IdO') are occupying the rental unit, and that none of the children are minors.

2. A notice of hearing was sent to the rental unit addressed to the 'Unauthorized Occupant' in addition to the notice of hearing sent to the Tenant, and the Tenant confirmed all three children were aware of the hearing. Given the parties' submissions and IbO, AO and IdO's knowledge of the application and proceedings, I found it appropriate in the circumstances to amend the application to name IbO, AO and IdO as 'Unauthorized Occupants'. The amendment is reflected in the style of cause of this order.

A2 Application:

3. The Unauthorized Occupants were in possession of the rental unit on the date the application was filed.
4. The parties do not dispute that they signed a lease agreement for the two-bedroom rental unit on September 3, 2007, naming three of the Tenant's children, IbO, AO, and IdO as Occupants.
5. Pursuant to subsection 100(2) of the *Residential Tenancies Act 2006* ('Act'), the application was filed within 60 days after the Landlord discovered the unauthorized occupancy of the rental unit. The Landlord's Agent testified that on February 13, 2025, he attended the unit after providing proper notice in order to address a maintenance issue. The Landlord's Agent found the Tenant's son in the unit who replied when asked that his father does not live in the unit but comes by sometimes. The Landlord then filed the application on February 18, 2025, within the 60-day time limit. The Landlord's Legal Representative submitted an email dated February 13, 2025, containing the letter from the Landlord's Agent to the Property Manager detailing the Landlord's Agent's conversation with the Tenant's son and his attempts to get a hold of the Tenant in January 2025 as evidence.
6. The Landlord's Agent further testified that the maintenance request for the rental unit was made by the Tenant in early January 2025, and the Notice of Entry for the unit was in the Tenant's name. The Tenant had also fallen into arrears by January 2025, and he was sent notices in his name for this issue as well. The Tenant also never made any requests to add his children to the lease agreement, and the Landlord has not entered into a tenancy agreement with the Unauthorized Occupants.
7. The Tenant testified that from 2007 to 2019, he resided in the unit with his wife and four children. The Tenant then moved to Barrie for work where he currently lives with his wife, one daughter and their grandchild. However, the Tenant also resides in the unit at least 2-3 days a week for work purposes and sleeps on an inflatable mattress when there as his children occupy the two bedrooms. The Tenant further testified that he continues to pay rent for the unit and make maintenance requests to the Landlord when needed by writing them out and placing them on the Landlord's Agent's door. The Tenant does not dispute, however, that his son also makes some maintenance requests as well using the Landlord's online system/phone app.
8. This application is brought under s.100 of the Act, which provides that if a tenant transfers the occupancy of a rental unit to a person in a manner other than by a proper assignment or a proper sublet, the landlord may apply to the Board for an order terminating the

tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.

9. Per the Court of Appeal's decision in *Samuel Property Management Ltd. v. Nicholson* 2002 CanLII 45065 (ON CA), 2002, 61 O.R. (3d) 470 ("*Samuel*"), the Tenant's use of the rental unit may be relevant, but it is not decisive. The issue is whether the Tenant handed over the day-to-day occupancy and control of the rental unit to the Unauthorized Occupants.
10. As this is a landlord's application, the burden of proof rests with the Landlord. The Landlord's Legal Representative cross-examined the Tenant, challenging that the Tenant resides in the unit at least 2-3 times a week, yet did not produce any evidence to disprove the Tenant's claim. Where it is one person's word against another and the Landlord did not provide evidence to prove the contrary, I accept the Tenant's testimony as the best evidence regarding how often he stays at the rental unit. In any event, the Tenant's partial residence in the unit does not in itself establish that the Tenant transferred control over the rental unit to the Unauthorized Occupants. It is equally possible the Unauthorized Occupants continue to remain as roommates and are in possession of the rental unit without there being any change in control over it.
11. The Tenant testified that he also continues to pay rent for the unit, and the Landlord's Agent confirmed that a cheque for the outstanding arrears was provided by the Tenant prior to the hearing, though it was yet to be deposited. The parties also do not dispute that maintenance requests have been made by the Tenant, however one of the Unauthorized Occupants (the Tenant's son) also makes such requests when needed. Though the Landlord's Agent suspects that it is now only the Unauthorized Occupants making maintenance requests, this claim remains mere suspicion as no supporting documentary evidence was submitted to show that all incoming maintenance requests for the unit are made using only the Landlord's online system/phone app, since the Tenant testified he only writes requests out on paper, and/or are only coming from the phone of one of the Unauthorized Occupants when they use the app. Evidence that the Unauthorized Occupants are in full-time control of the rental unit is evidence I would have reasonably expected the Landlord to adduce in support of their claim that the Tenant has transferred the occupancy. Consequently, by the Tenant making maintenance requests, he is still exercising control over the rental unit.
12. When looking at the totality of the evidence and the reasoning in *Samuel*, I am not satisfied on the balance of probabilities that the Tenant has transferred occupancy of the rental unit to the Unauthorized Occupants. The Tenant still occupies the rental unit several days a week, pays the rent for the unit, and makes maintenance requests to the Landlord when needed. The Tenant's evidence suggests that the rental unit is his secondary residence. A tenant having more than one residence does not in itself establish a transfer of occupancy. The Landlord needed to show that the Tenant does not exercise control over the unit, and I am not satisfied that was done in this case. Therefore, I find the Tenant has not transferred occupancy of the rental unit to the Unauthorized Occupants in a manner that was not authorized by the Act, and the Landlord's application must be dismissed.

It is ordered that:

1. The application is dismissed.

February 3, 2026
Date Issued

Fotoula Hatzantonis
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.